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By: **Senator Middleton**  
Introduced and read first time: February 28, 2003  
Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Owner Controlled Insurance Programs for Public Works Projects**

3 FOR the purpose of requiring a public agency to issue a request for proposals for the  
4 purpose of making a certain determination if the cost of a public works project is  
5 over a certain amount; requiring the public agency to use a certain owner  
6 controlled insurance program to the extent a certain determination is made;  
7 requiring an owner controlled insurance program used by a public agency to  
8 meet certain conditions; authorizing the public agency to purchase an owner  
9 controlled insurance policy with a deductible or self-insured retention in a  
10 certain amount; requiring the Board of Public Works to adopt certain  
11 regulations; defining certain terms; and generally relating to owner controlled  
12 insurance programs for public works projects.

13 BY adding to  
14 Article - State Finance and Procurement  
15 Section 9.5-101 through 9.5-104, inclusive, to be under the new title "Title 9.5.  
16 Owner Controlled Insurance Programs for Public Works Projects"  
17 Annotated Code of Maryland  
18 (2001 Replacement Volume and 2002 Supplement)

19 Preamble

20 WHEREAS, Public agencies spend millions of dollars on public works projects  
21 every year, and it is essential that the contractors, subcontractors, workers, and  
22 public agencies involved in public works projects be covered by comprehensive  
23 workers' compensation and general liability insurance; and

24 WHEREAS, Contractors and subcontractors pass on the high cost of workers'  
25 compensation and general liability insurance by including the costs in the bids they  
26 submit for public works projects and the high cost of obtaining workers' compensation  
27 and general liability insurance can prohibit small business and  
28 minority/disadvantaged owned businesses from bidding on public works projects; and

29 WHEREAS, When public agencies purchase workers' compensation and general  
30 liability insurance for public works projects, they are able to establish strict safety

1 programs that make the projects safer for workers and realize significant savings by  
2 using their purchasing power to obtain workers' compensation and general liability  
3 insurance for public works projects, thereby relieving the individual contractors and  
4 subcontractors from having to purchase the policies and enabling the contractors and  
5 subcontractors to submit lower bids; and

6 WHEREAS, The State has forecast a decrease in State tax revenues for the next  
7 fiscal year; now, therefore,

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article - State Finance and Procurement**

11 TITLE 9.5. OWNER CONTROLLED INSURANCE PROGRAMS FOR PUBLIC WORKS  
12 PROJECTS.

13 9.5-101.

14 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

15 (B) (1) "OWNER CONTROLLED INSURANCE PROGRAM" MEANS A SERIES OF  
16 INSURANCE POLICIES ISSUED TO A PUBLIC AGENCY TO COVER SUBSTANTIALLY ALL  
17 THE CONTRACTORS AND SUBCONTRACTORS ON A SPECIFIC PUBLIC WORKS PROJECT  
18 COMBINED WITH A CENTRALLY ADMINISTERED SAFETY PROGRAM.

19 (2) "OWNER CONTROLLED INSURANCE PROGRAM" INCLUDES POLICIES  
20 COVERING WORKERS' COMPENSATION, GENERAL LIABILITY, ENVIRONMENTAL  
21 LIABILITY, PROFESSIONAL LIABILITY, CASUALTY, PROPERTY, TITLE, BUSINESS  
22 INTERPRETATION, BUSINESS RISK, FORCE MAJEURE, COMPLETION, AND OTHER  
23 INSURABLE RISKS.

24 (C) "PUBLIC AGENCY" MEANS A DEPARTMENT, AGENCY, AUTHORITY, BOARD,  
25 COMMISSION, OR SIMILAR ENTITY OF THE STATE ORGANIZED UNDER STATE LAW  
26 FOR A PUBLIC PURPOSE.

27 (D) (1) "PUBLIC WORKS PROJECT" MEANS ANY CONSTRUCTION,  
28 RENOVATION, DESIGN, ENGINEERING, OR INSPECTION UNDERTAKING BEING  
29 PERFORMED AT ONE SITE OR A SERIES OF SITES, AT ONE TIME OR OVER A SERIES OF  
30 YEARS, FUNDED BY OR AT THE DIRECTION OF A PUBLIC AGENCY.

31 (2) "PUBLIC WORKS PROJECT" INCLUDES THE CONSTRUCTION AND  
32 RECONSTRUCTION OF ROADS AND BRIDGES, THE BUILDING AND REHABILITATION  
33 OF WATER AND SEWER WORKS, AND THE CONSTRUCTION AND RENOVATION OF  
34 PUBLIC BUILDINGS SUCH AS OFFICE BUILDINGS, SCHOOLS, DORMITORIES,  
35 LIBRARIES, AIRPORTS, TRAIN STATIONS, PARKING STRUCTURES, AND PRISONS.

1 9.5-102.

2 THE PURPOSE OF THIS TITLE IS TO ENABLE A PUBLIC AGENCY TO UTILIZE AN  
3 OWNER CONTROLLED INSURANCE PROGRAM FOR PUBLIC WORKS PROJECTS IF THE  
4 HARD CONSTRUCTION COSTS ARE IN EXCESS OF \$100,000,000, WITH THE GOALS OF  
5 SIGNIFICANTLY REDUCING THE COSTS OF PUBLIC WORKS PROJECTS WHILE  
6 ENSURING GREATER PROJECT SAFETY FOR WORKERS.

7 9.5-103.

8 (A) IF THE TOTAL COST OF A PUBLIC WORKS PROJECT IS OVER \$100,000,000,  
9 THE PUBLIC AGENCY RESPONSIBLE FOR CONSTRUCTION OF THE PROJECT SHALL  
10 ISSUE A REQUEST FOR PROPOSALS FOR THE PURPOSE OF DETERMINING WHETHER  
11 USE OF AN OWNER CONTROLLED INSURANCE PROGRAM IS COST EFFECTIVE AND IN  
12 THE BEST INTEREST OF THE STATE.

13 (B) TO THE EXTENT THE PUBLIC AGENCY DETERMINES IT IS NECESSARY AND  
14 IN THE BEST INTEREST OF THE STATE, THE PUBLIC AGENCY SHALL USE AN OWNER  
15 CONTROLLED INSURANCE PROGRAM.

16 (C) AN OWNER CONTROLLED INSURANCE PROGRAM USED BY A PUBLIC  
17 AGENCY UNDER THIS SECTION:

18 (1) SHALL MAINTAIN COMPLETED OPERATIONS COVERAGE FOR A TERM  
19 OF AT LEAST 3 YEARS DURING WHICH COVERAGE IS REASONABLY COMMERCIALY  
20 AVAILABLE AS DETERMINED BY THE PUBLIC AGENCY;

21 (2) MAY NOT PROHIBIT A CONTRACTOR OR SUBCONTRACTOR FROM  
22 PURCHASING ANY ADDITIONAL INSURANCE COVERAGE THAT THE CONTRACTOR OR  
23 SUBCONTRACTOR BELIEVES IS NECESSARY FOR PROTECTION FROM ANY LIABILITY  
24 ARISING OUT OF THE CONTRACT, BUT THE COST OF THE ADDITIONAL INSURANCE  
25 MAY NOT BE PASSED THROUGH TO THE STATE ON A CONTRACT BID; AND

26 (3) MAY NOT INCLUDE SURETY INSURANCE.

27 (D) THE PUBLIC AGENCY MAY PURCHASE AN OWNER CONTROLLED  
28 INSURANCE POLICY THAT HAS A DEDUCTIBLE OR SELF-INSURED RETENTION IF THE  
29 DEDUCTIBLE OR SELF-INSURED RETENTION DOES NOT EXCEED \$1,000,000.

30 9.5-104.

31 THE BOARD OF PUBLIC WORKS SHALL ADOPT REGULATIONS TO CARRY OUT  
32 THE PURPOSES OF THIS SUBTITLE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 June 1, 2003.